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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/815,592   | 04/02/2004  | Jeff Bemis           | 04-118P             | 1159             |
| 31929  | 7590        | 01/20/2006           | EXAMINER            |                  |
| STANLEY M. MILLER<br>2790 Sunset Sunset Point Road<br>Clearwater, FL 33759 |             |                      | AMIRI, NAHID        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3679                |                  |
| DATE MAILED: 01/20/2006  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/815,592             | BEMIS ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Nahid Amiri            | 3679                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 15-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 5, 6 and 9-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of Group I, Figs. 1 and 2, claims 1-14, in the reply filed on October 21, 2005 is acknowledged.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1-14, it should be noted that the preamble of claims 1-14 sets forth only "a frame" subcombination while the body of claims positively recite element of the combination e.g., the gate. Accordingly, it is unclear as to whether the subcombination of a frame or combination of frame with gate is being claimed. Since the body of the claims positively includes the gate, the combination is presumed. With respect to claim 7, it is unclear what lines 8-9 are supposedly setting forth. Are applicants requiring a gate that exceeds a predetermined width? How does a stated capability/intended use serve to structurally define and limit the middle cross brace? Further the "predetermined width" is undefined. Finally, lines 8-9 imply that there would not be a middle cross brace in some circumstances, i.e., in gates with a width below a "predetermined width". Accordingly, is a middle cross brace actually required?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,161,783 German.

In regard to claim 1: German discloses a fence gate (10) (Figs. 1-3) comprising a frame, wherein the frame includes a first and second upright braces (20, 22) having outboard vertical edges; the first and second vertical edge being laterally spaced from each other by a width of the gate (10). As shown by Fig. 2, there is a first upper cross braces having a length substantially equal to a width of the gate (side panel of 30) and an underlying second upper cross brace having a first end that abuts the first upright brace (20) near an upper end thereof and a second end that abuts the second upright brace (22) near the upper end thereof; the first and second upright braces (20, 22) each having an opening (46) formed therein to receive opposite ends of the first upper cross brace therein; the first and second lower cross braces (top and side panels of 34) having a length substantially equal to a width of the gate (10); the first and second upright braces (20, 22) each having an opening (46) formed therein to receive opposite ends of the first lower cross brace therein; a second lower cross brace having a first end and a second end that abuts the first and second upright brace (20, 22) near a lower end thereof, the first lower cross brace disposed in abutting, overlying relation to the second lower cross brace; a first and second upper and lower mounting members (36) having an outboard end or base (42) that abuts the first and second upright braces near the upper end thereof, and having an inboard end (38) that overlies and is secured to the first and second upper and lower cross braces.

In regard to claim 7: German discloses (Fig. 3) further comprising a first and second middle mounting members (36) secured to the first and second upright braces (20, 22) about mid-length thereof; a middle cross brace (32) having a first and second ends secured to the first and second mounting members; said middle cross brace (32) having a width that exceeds a

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predetermined width of the gate; and wherein the middle cross brace (32) having square cut opposite ends.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over German as applied to claims 1 and 7 above, and further in view of US Patent No. 5,868,382 Groves.

In regard to claims 2-4 and 8: German discloses (Figs. 1-3) that the first upper and lower cross braces are cut to length to substantially equal the width of the gate (10); and the second upper and lower braces being cut to length to fit between the first and second upright braces (20, 22). German does not disclose the first and second upright braces, and the upper and lower cross brace being formed of aluminum; the first upper and lower braces, the second upper and lower braces, and the middle cross brace (36) each having square cut opposite ends. Groves teaches (column 3, lines 2-6) forming the upright members and the cross-piece members of the frame from aluminum in order to construct a fence which will have the advantage of being substantially rust free, corrosion free and in most instances, be more attractive than conventional fences and gates. It would have been obvious to one of ordinary skill in the art at the time of invention was made to form the frame of the gate of German from aluminum as taught by Groves in order to construct a fence which has the advantage of being substantially rust free, corrosion free and in most instances, are more attractive the conventional fences and gates.

***Allowable Subject Matter***

Claims 5, 6, and 9-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

With respect to claims 5 and 6, the prior art does not show or suggest that the second end of first upper and lower cross braces and second upper and lower cross braces having an obtuse angle cut formed therein; with respect to claims 9 and 10, the middle cross brace having a second end having an obtuse angle cut formed therein; and with respect to claims 11-14, wherein the first, second upper and lower mounting members having a triangular configuration.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art of record US 5,716,041 Groves; US Patent No. 6,176,043 B1 Gibbs; US Patent No. 3,699,615 Duncan; US Patent No. 6,443,088 B1 Putman et al.; US Patent No. 4,690,440 Rogers; US Patent No. 4,871,203 Rogers; US patent No. 3,801,072 Newberry, Jr.; US Patent No. 6,398,193 B1 DeSouza; US Patent No. 4,174,096 Campbell; US Patent No. 6,827,336 B2 Hwang; US Patent No. 5,702,090 Edgman; US Patent No. 6,499,725 Meis et al.; US Patent No. 6,017,019 Erwin; US Patent No. 6,131,888 Brown; US Patent No. 5,716,041 Grove; US Patent No. 6,751,906 B2 Bass; US Patent No. 6,398,193 B1 Desouza; and US Patent No. 6,751,906 B2 Bass, are cited a gate structure with bracing members.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (571) 272-8113. The examiner can normally be reached on 8:30-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-

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7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nahid Amiri  
Examiner  
Art Unit 3679  
December 20, 2005



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